



STATE OF WASHINGTON

## STATE BUILDING CODE COUNCIL

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## MINUTES STATE BUILDING CODE COUNCIL

**Date:** October 14, 2005  
**Location:** Renton Holiday Inn Select

**Council Members Present:** Dave Baker, Rory Calhoun, Kristyn Clayton, Neva Corkrum, Stephen George, Mari Hamasaki, Diane Hansen, Tom Kinsman, Steve Mullet, Terry Poe, Dale Wentworth

**Council Members Absent:** John Neff, Peter DeVries, John Cochran

**Audience Present:** Dick Bower, Jim Woodbury, Jon Sui, Lisa Jones, John Roth, Tom Nichols, Traci Harrison, Steve Swarthout, Lenardo Talley, Richard Swanson, Paul O'Connor, Bob Eugene, Mary Kate Martin, Maureen Traxler, Allen Johannesse, Michele Smith, Tony Baca, Brian Minnich, Phil Forrest, Michael Barth, Bob Kelley, Kraig Stevenson, John Wack, Lee Russell, Ralph Johns, Anthony Frazer

**Staff Present:** Tim Nogler, Krista Braaksma, Sue Mathers

### CALL TO ORDER

Tim Nogler called the meeting to order at 10 a.m. He announced that, according to Council bylaws, a presiding, temporary chair is to be elected in the absence of the Council Chair and Vice Chair. Given the absence of Chairman John Neff and Vice Chairman Peter DeVries today, Tim said that Steve Mullet has graciously volunteered to serve as chair.

### Motion #1:

**Dave Baker moved the nomination of Steve Mullet as presiding, temporary chair at today's Council meeting. Tom Kinsman seconded the motion. The motion was unanimously adopted.**

Steve welcomed everyone to the meeting. Introductions were made.

## **REVIEW AND APPROVE AGENDA**

The agenda was reviewed and approved as written.

## **REVIEW AND APPROVE MINUTES**

The minutes of the September 9 Council meeting were reviewed. Tim noted that the question arose at that meeting of what constitutes a majority vote for the passage of local amendments. The Council's legal counsel determined that local amendments should be treated the same as statewide amendments. Thus such votes require a majority of 14 Council members, or eight affirmative votes, for adoption. Steve asked about the Duvall local amendment which initially received eight yes votes, but did so while tabled and not removed from the table, and then failed to receive eight yes votes following removal from the table. Tim said it's appropriate for the Council to revote on the Duvall local amendment under agenda item #7, "Review of Local Amendments."

The minutes were approved as written.

## **PUBLIC COMMENT ON ITEMS NOT COVERED BY THE AGENDA**

### **John Roth**

Good morning. I'm John Roth, with Blazer Industries, in Aumsville, Oregon. I'm at P. O. Box 489. The phone number there is (503) 749-1900.

I'd like to speak with the Council a little bit about the recent energy code revision that came into effect on July 1 of this year. First of all, I'd like to say that it took many people in the industry by surprise. And I would suggest that there should probably be a better process in place. During the code development process there should be notification to stakeholders as to when these codes are going to be implemented.

What happened with us, we found out from the Department of Labor and Industries' plan reviewer who does plan reviews for our building. They told us about a week and one half before the code change went into effect that this new code is coming out. And to my mind, that's not sufficient notification. And that was at the point that they'd found out themselves. So you have a situation where we're just finding out about it, and the people that are regulating us have just found out about it as well. Obviously you guys have your meetings and your minutes, and if you follow along on the website you should be able to see where you are right now. If you can come up with a way to make that clearer, that would help us out.

I'd also like to draw attention to RCW 19.27A.025, nonresidential buildings minimum standards amendments. Item 1(b) states that any new measures, standards or requirements adopted must be technically feasible, commercially available and cost-effective to building owners and tenants. After studying the minutes from your meetings in October and November 2004, I didn't see any indication that there was a cost analysis done with regard to the energy code that was adopted on November 12<sup>th</sup>. I would question how it's possible that that isn't done and yet it's gone ahead and adopted. It's a firsthand that the cost, the change, I'm talking specifically on HVAC, and it's the change from the 10 SEER heat pump at a cost around \$1675 to change that to a 12 SEER at \$2653 for a four-unit building. That's a pretty substantial increase, almost double, about a thousand dollars more.

The other issue that we're finding right now is that the two major manufacturers that produce these 12 series heating units, the wall-hung units that we use quite a bit of in our industry, they're making a 12 series unit which meets that part of the code, but it doesn't meet the HSPF requirements in the heating mode. We're left without a complying unit. Come January 23, what are we supposed to use at this point?

That's what we're looking at. We're working together with the manufacturers and suppliers to see what we can do. I should mention, we do have some reprieve with L&I. They're allowing us to continue to use units as long as the plans that we have are submitted before that date. But at some point here, we're still going to have to take a look at this.

Again, with these units, the cost, we're not going to eat the cost, or the company. We'll pass those on to the end user. A lot of times that ends up being the school districts that build a lot of double-wide classrooms or the State of Washington, even though we're located in Oregon. Probably 60-70 percent of our work is done up here in the State of Washington.

One other thing I'd like to mention here. The last sentence of RCW 19.27A.25(3) says that substantial amendments to the code shall be adopted no more frequently than every three years. As far as our industry is concerned, when the building envelope, equipment efficiency and lighting performance are changed, that's a substantial amendment in our view. And it doesn't make sense to us to adopt these one year after a major building code cycle review. Keeping these revisions on a three-year cycle would save us a lot of work in our planning. It would save the plan reviewers at the state level and local level a lot of work. They wouldn't have to spend as much time going over plans that they had just approved.

To let you know, we have what we call design master plans that we use for a lot of our stock type building floor plans that don't change very often. Those are good for a three-year period. But if you're changing the code every year, we have to resubmit these plans every year. Not only that, but we have reciprocity with the State of Oregon and the State of Idaho. So we run into the same thing. Every time someone changes the code, we have to resubmit to all three, even though nothing changed for Oregon or Idaho. So again, if we can keep that on a three-year time line, that would really be of benefit to us in the building industry.

In summary, it would be nice if we could have some more effective notification, whatever you folks can do with that. And at the time of code revisions, an accurate cost analysis should be required and whether the equipment is even commercially available to people that need this equipment to comply with the code change. Also work to keep the code changes on a three-year cycle. I understand that when you've got corrections that need to be made that's one thing, but not for more major amendments than language correction.

We're not against energy savings. As a company, we really try to promote energy saving design. We try to promote working together. In fact we have an excellent working relationship with the plan reviewers in the State of Washington, and actually all the states that we deal with. So we're not a confrontational type company. But when you're faced with a situation like we have here, where we can't comply because the equipment isn't available, that puts us in a very interesting position.

It would be my hope that the new HSPF requirements could be postponed, maybe until the next building code cycle, or 2006. Obviously I don't know if that's possible. I will bring that up again at the November 4 meeting.

Terry Poe asked if there is only one supplier. Mr. Roth answered that his company deals with several suppliers. They've found two major manufacturers that carry the units. But those units don't comply with the HSPF requirements.

Tom Kinsman asked about being off the three-year cycle. Tim said that nonresidential energy provisions were considered several years in a row before they were adopted. Being off the cycle is the result of that lengthy consideration.

Rory Calhoun expressed concern about L&I not being timely informed of Council action. Steve pointed out that L&I has some responsibility for the lack of information, especially in view of the fact that a representative of that agency holds an ex officio Council seat.

Rory asked if an emergency rule might be appropriate in this case. Tim said that the rule is not effective yet. It becomes effective on January 23, 2006.

## **PUBLIC HEARING**

### **Building Code**

No testimony was received.

## **Fire Code**

### **Lisa Jones**

Good morning. I'm Lisa Jones, Fire Marshal for the City of Spokane. My address is W 44 Riverside Ave, Spokane, 99201. My phone number is (509) 625-7040.

I'm here today to speak on behalf of the legislation on sprinklering nightclubs. I believe the public has the right to expect a reasonable degree of safety wherever they go, especially in nightclubs. I think it's a higher hazard occupancy because it's a lesser level of consciousness in nightclubs, drinking alcohol, entertainment, people are not focused on where the exits are. And it's typically not quiet and well lit in nightclubs.

So I think it's vitally important, given what happened in Rhode Island, and also the potential that can happen anywhere in the United States, especially in older cities, lots of older buildings, in several places of entertainment, nightclub-type occupancies. I think it's vitally important that we provide that safety for the public.

### **Jim Woodbury**

Good morning. I'm Deputy Chief Woodbury, Assistant Fire Marshal for the City of Seattle. I also wish to support the Engrossed Substitute House Bill 1401. I supported this bill before the Senate and the House, and spoke on it.

As kind of a point of reference for the Building Code Council, here this last summer the City of Seattle performed what we call the joint assessment team. This is a group of building code officials, Seattle police, Seattle fire, liquor board commission, Seattle Department of Transportation. And we went out every Friday and Saturday for a period of about 11 weeks and assessed nightclubs in our Belltown and Pioneer Square areas. We visited approximately 85 nightclubs. And we just finished up a report that will be going to the Mayor's Office and city council.

Some of the aspects of that report point out several glaring things that we found in these nightclubs. In spite of many of these businesses operating for years, being aware of the fire code, being visited by our companies (and the City of Seattle has probably one of the most robust inspection programs in the state), we found a continual series of what I consider grievous violations, primarily involving exits, occupancy loads, permit violations regarding open burning. In addition there were other violations not related to the fire code, several liquor violations regarding licensing and stuff like that, but that's another question.

This ESHB 1401 is very important. What this report said to me is that in spite of our best efforts with legislation, inspections and this sort of thing, important violations are still occurring on a regular basis. Sprinklers may help alleviate some of that fear that we have about major disasters occurring in these types of establishments.

The other part I want to support is another crucial part we found. I want to support the Washington State Fire Marshals here, what they're calling an operating occupant load. As I view it, that's a little different than what the C of O is. But this is an occupant load that would be established for the building of a business based on what they're doing at that time. What we found as we went out and inspected these places is oftentimes the activity in the building did not match what was on the C of O. It may not have had a C of O, the C of O may have been outdated, changes may have been made, the building was built prior to 1956 and didn't require a C of O. And we had difficulty determining exactly what was the appropriate occupant load for this building. And that is crucial to determining whether or not the building needs a sprinkler and some of the egress requirements. We're going to help support that issue for the authority having jurisdiction, whomever that may be, as to being able to determine the occupant load, which will be different than the C of O. It allows us a working tool for inspection companies that are out there during the weekends and the nights to give them some type of indication of the level of activity in this building.

Tom asked about the definition of "operating occupancy load." Mr. Woodbury said it was proposed by the Washington State Association of Fire Marshals as an amendment to ESHB 1401. Tim noted that written testimony was submitted that will accompany the verbatim transcript of verbal testimony when it's distributed to Council members.

Steve asked about the definition of "nightclub," how an establishment determines whether or not they're a nightclub. Mr. Woodbury agreed with Steve that the determination is made by the city under its zoning rules and regulations. The definition applied in ESHB 1401 is an occupant load over 100, providing entertainment without fixed seating, serving beverages of any sort (which hopefully will capture some teenage nightclubs serving nonalcoholic beverages). He said the occupancy load of 100 is crucial in triggering sprinklers and some egress requirements.

Diane Hansen called attention to the CR-102 document containing the Fire Code TAG's proposed definition of "nightclub." She said that definition has been slightly amended by the Washington State Association of Fire Chiefs and Fire Marshals.

Tom asked how often the Seattle Fire Department does a normal walk-through of establishments. Mr. Woodbury responded that the City of Seattle Fire Department inspects every building, triplex or better, usually once a year. Some smaller, residential occupancies are inspected twice yearly. A public assembly inspection program additionally inspects on Friday and Saturday nights when nightclubs are active. Issues addressed are overcrowding, exit signs, egress, and open flame requirements. Public assembly inspections occur every week during the busy season.

Kristyn Clayton asked how many nightclubs in Seattle will have to be retrofitted. Mr. Woodbury said the number is unknown at this time. Kristyn sympathized with jurisdictions that will have to notify establishments that they now meet the definition of nightclub and are required to have automatic sprinklers installed.

Dave Baker asked what specifically Mr. Woodbury supports. Mr. Woodbury said he supports ESHB 1401 and the proposed amendments by the Washington State Fire Marshals Association, with the exception of who determines the operating occupancy load. He prefers the local jurisdiction to determine the operating occupancy load.

The question was raised what constitutes fixed seating. Tables and chairs that do not move, as in a stadium, are fixed seating.

### **Dick Bower**

Good morning. My name's Dick Bower. I'm the Building Official and Fire Marshal of the City of Gig Harbor. I just want to make a couple of comments. I did e-mail some comments into the Council website. You'll probably get those later on.

First of all, I think as far as the sprinkler systems in nightclubs, it's time for us to do this. I think that both the rulemaking document and what we've got from the Legislature are adequate to do that.

The one thing I would like to address, though, is who determines the occupant load question. As the Building Official and Fire Marshal, I play a couple of different roles. And I've argued with myself back and forth a long time over how the wording in this thing should really work out.

I'd like to give kudos to the City of Seattle and their task force approach to going out and dealing with occupant loads. I think that's a great way to do it. Unfortunately not every jurisdiction has that capability. For example, in the City of Gig Harbor, we don't have a fire department. We have a fire district, who goes out and does occasional nightclub inspections.

My point as far as the occupant loads and who determines those, is that right now the building official is determining the occupant load for buildings based on what comes in for permitting at that time. If we have fire code officials determining operating occupant load, as was said in the State Fire Marshals Association document, or determining the occupant load as stated in here, we have a potential to have a couple of different occupant loads out there, floating around on an occupancy, which is confusing not only to the owners but also to the people that are out there doing the inspections, whether it's fire inspectors, police officers that are going into a business at night, or any of the other inspectors out there for the various codes that we end up enforcing.

I'd like to see some language that would encourage the fire code officials and the building code officials, and for that matter plumbing and mechanical code officials, to work together on determining what that occupant load is and amending the certificate of occupancies to reflect what that occupant load has been agreed at. That way we have one occupant load that everyone's worked together on to determine it.

When we determine an occupant load just based on exiting and sprinkler systems and those kinds of things, we're neglecting some other code things that are fairly important, one of them being plumbing fixtures. The state's amended the plumbing fixture counts that are required. There's been a lot of discussion about the fact that in larger cities, folks have to wait in line for a long time to get into the restrooms. It seems that can happen in nightclubs. We have requirements for plumbing fixtures, but if we create another operating occupant load, that may not be addressed.

At the same time, we also need requirements for ventilation and exhaust fumes based on occupant loads. If we change the occupant load because of what's in sprinkler systems, we may not be addressing the fresh air and ventilation loads. So I'd really like to encourage the Council, as we go through this, to look at some language that would encourage the authorities having jurisdiction to work together, the different code officials, to determine what that occupant load is going to be and amend the certificate of occupancies to reflect that, rather than having some on-the-side occupant loads determined.

Tom said the occupant load used to determine sprinklers is calculated solely for that purpose and should not be used for other purposes. He said it should not be on the certificate of occupancy. Dick agreed that it's not as simple as changing the C of O. But he said it's important that all the code officials work together to determine the occupant load, particularly when the use of the occupancy changes.

## **Lee Russell**

Good morning. I'm Lee Russell. I'm here to represent Local 699, sprinkler apprentices out of Seattle. We're located at 2800 First Avenue, Room 111, in Seattle, 98121. You can reach us at (206) 786-3624.

Much of what we wanted to say has already been said by the fire marshals. They have already spoken. We wish to speak in support of this bill and the fine work that's been done by the TAG committee.

We simply wish to point out that this process is proactive and leading the nation at this time, when it comes to getting this job done in sprinklering these clubs. Of course, everybody here knows that this is a reaction to what happened in Rhode Island a few years back.

We would like to point out that actions have consequences. As we learned with Katrina recently, some day eventually comes. This group is being proactive to try to save lives. The only question before us, especially with who's going to make the determination as to what a nightclub is, is how many are going to be protected and how many people are going to be left by the wayside. We'd like the net to be cast as wide as possible. We all have had the experience of looking in a newspaper one morning and wondering why something wasn't done earlier.



And I think that the Legislature, this group, and the TAG committee is moving forward with something that we're all going to be able to be proud of at the end of the day. We'd just like to thank you all for your efforts. Hopefully we'll lead the nation in this, and others will follow.

## **Ralph Johns**

Good morning. My name is Ralph Johns, Deputy Chief of Prevention and Fire Marshal for the City of Tacoma. If I'm understanding correctly, you do not have copies of the proposal that the TAG has brought forward. Is that correct? If that's the case, I'd be happy to pass it around. [Diane indicated that the revised proposal has not been distributed to the Council. Mr. Johns distributed it.]

The proposal is two-sided. It happens to say "Draft" on the top. The backside holds the actual words that the TAG is bringing forward, that slightly modifies two different areas I believe, or two different concepts. [Diane noted that it's not from the TAG, but the Fire Marshals Association.]

Let me address a couple things. First of all, I want to speak in favor of what the State Fire Marshals and Chiefs are proposing to amend the WAC as it appears in your minutes. Furthermore I understand that the Legislature has already mandated to pass a retroactive sprinkler ordinance in nightclubs. So I know that you're just carrying out the intent and the direction of the Legislature.

The State Fire Marshals sat down on numerous occasions and came up with a couple modifications to the language the Legislature proposed for several reasons, the biggest being that we like consistent application across jurisdictions of this retroactive requirement. We all understand that one of the biggest concerns the industry has is that Seattle does one thing, Tacoma does something else, Pierce County does a third thing, and Spokane does a fourth thing. At least that's what we're challenged with, that happens a lot. So it's important to us to define a couple of terms the Legislature used so that we would have some consistent across-jurisdictional application of this.

And there were two areas there that needed some definition. One of them is what is "live entertainment." Or, excuse me, what is "paid performing artists"? If you look at the bottom of where it says "nightclub" here, the very last sentence, this is a change from your notes that the state fire marshals are proposing, it says "paid performing artists are those entertainers engaged to perform in a for-profit business establishment." The enforcement issue here, which I'm glad you brought up because this will be a challenge for our fire departments. This is additional new work. We are excited about doing it because we think it addresses a problem. But it will be a challenge and new work for us. It's not about the one-night show that happens in a banquet hall or somewhere else. What's applicable here is the establishment that operates day in and day out. We have other issues with that one-night stand place, mind you, but we're only talking about, and the legislative intent, as I understand it, was to apply to those businesses engaged regularly in nightclub-type work.

And they defined that pretty specifically, but they left it very difficult for us to determine what is a “paid performing artist.” So we defined it, okay, in a way that we believe cross jurisdictionally we can apply it in a consistent manner. That was one of the two major issues that the fire marshals addressed.

The other issue is that in the application of the building and the fire codes, the building official is given the authority to establish occupant load. And they do that when buildings are originally constructed and when there is significant remodels done to those buildings. Otherwise, they are not engaged in the building. And the intent of those occupant load calculations is to determine exiting requirements, plumbing requirements, all those other things that are designed and built either in new construction or significant remodel.

Well, just as Mr. Kinsman indicated, this particular application is only intended to retroactively install sprinkler systems. It is not a change in use. It is not intended to retroactively say you have to have more bathrooms. If you are an existing legal nightclub that is unsprinklered and meets the definition, it’s intended to say that you need to put in sprinklers, not any other code requirements.

So that is why, as you see in Item #3 under definition of “nightclub,” it says at the end “as determined by the fire code official.” Because it’s going to be the fire code official that’s out on the street identifying these places, trying to discern if they do meet the definitions. And it’s going to make it much more efficient and effective for one agency to be dealing with these businesses on one issue, that’s fire sprinklers, than trying to have to go back to the building official, get them to come out and calculate the occupant load. It just makes it very cumbersome. Practical experience says it’s very difficult to get building officials to go to what we call “live, operating occupant loads.” They’re used to looking at plans, because when they calculate occupant load, it’s off a set of plans. And, in our world, you go out and what they originally designed the space to be 10 years ago, or 20 years ago, 30 years ago, when plans were reviewed, that changes annually as businesses modify how they’re set up, put in chairs, take out chairs, do different things, fix tables, unfix tables, buy and sell.

On a side note, this is a bigger issue than this particular legislation. But we’re not attempting to address the bigger issue. But it affects us, which is why the fire marshals are asking for that change that at least authorizes the fire code officials to be able to determine the occupant load for the single purpose of retroactively installing sprinklers.

So those are the two changes that the fire marshals and the fire chiefs are asking today. But I want to be real clear that when the previous speaker talked about coordinating so you’re dealing with exits and plumbing issues, that is not the intent. And jurisdictions are retroactively going to be enforcing lots of other things. That is not the intent of the legislation, nor the intent of the fire marshals or fire chiefs to be going in that direction.

To a question from Rory about operating occupant load, Mr. Johnson said if a building’s official CO says 75 but tables and chairs have been removed and a dance floor has been set up, and the square footage calculation is now over 100, sprinklers will be required.

Tom said if fire marshals and fire chiefs are concerned about definitions, “operating occupant load” certainly should be defined. He said it’s confusing to talk about two occupant loads, one operating and one not.

### **Anthony Frazer**

Hello. I’m Anthony Frazer, the owner/operator of Trinity Nightclub in downtown Seattle.

Obviously I’m in the minority, where I stand alone in opposing this. I’ve been running and operating my business for 12 years. I definitely oppose treating all nightclubs in the same regard. So [we need to] figure out the clarification of what makes a nightclub, like my nightclub in particular, different than other businesses that can hold lots of people in them.

I want to start by saying that, in the 12 years, I’ve been working hand in hand with the fire department for all those 12 years. And without a doubt, they are the friendliest group to work with of all the agencies and authorities. They come and talk to you, and they let you know if there’s any problems or issues and give you a chance to fix it, like the way it should be. They don’t just demand stuff be done right there, unless of course it’s something that needs to be done right at that point in time.

I am annually inspected by the fire department. And I also have at least two or three other times that they come through, as one of the gentlemen mentioned, for public assembly and to make sure that there’s no overcrowding. My insurance company has told me from a few years back when this happened in Rhode Island that I used to have fire performers that would come in and do their thing. They said that “If you want to maintain your insurance with us, you can no longer have those performers.” So I cut those performers out. But that’s one of the ways...I’m trying to see why people may think we’re different than if we can have those types of performers. Well, I can’t have insurance if I do those performers. So I need insurance. So I no longer have those performers.

I can’t have pyrotechnics or anything like that. Some other people have mentioned lighting issues. I know that there’s a rule on the books by the Washington State Liquor Control Board where you have to have a certain lighting where you can read eight-point type. And they come through quite often as well [inspecting for that]. So we have to maintain proper lighting.

Another reason we seem to be different is sound. I’ve put in a very expensive sound system, where it has actually a sound red device, where if there is a fire, the whole sound system cuts out. And, of course, the emergency lighting is hooked up to it as well. If there ever was any sort of incident, that emergency and pathway lighting is also there.

So, on top of that, I guess I just am trying to figure out what makes the place different is how is it that the place I own that I just completely remodeled about nine months ago, and I’ve had every, you know, inspector come through, you know, building, electrical, plumbing, checking the place out and wiring seems to be all sufficient. I’ve been signed

off by them all. So why would I be different than another business? Everything's fire retardant. I can't have pyrotechnics and flames. How is the place going to catch fire? That's what I was told...you know, two-hour rating or four-hour rating. And if it's because of people smoking, I'd like to state for the record here that I'm all for no smoking in clubs, and hope that law passes. If you go back to New York or down to California, it's quite a pleasant experience to go into a nightclub or a bar and not smell like a cigarette at the end of the night. But that's a different thing.

Tom asked Mr. Frazer what will happen to his business, assuming that it's not sprinklered. Mr. Frazer answered that his business consists of three separate rooms. He said that the back room is presently sprinklered and has a 250 capacity load. The two front rooms, one at 119 and the other at 126, are not sprinklered. The 126-capacity room is a lounge with seating. Could the chairs and tables be moved to create a dance area? He said that's possible, but the room is too narrow for a proper dancing area. Mr. Frazer said the 119-capacity room would probably require sprinklering. He wonders why it's different from other retail businesses, such as a clothing store. He asked how a fire could start in that room.

Terry asked about the cost of sprinklering that room. Mr. Frazer said that the larger room in back cost about \$12,000 to install sprinklers. He said that because the design of the front room is much more detailed, he would have to hide the sprinkler equipment in that room. Thus the cost to install sprinklers would be greater in the front room.

Tom asked if Mr. Frazer's business can support the installation of sprinklers, or if he'd be forced to move. Mr. Frazer said he wouldn't have to move.

Steve asked if Mr. Frazer's insurance will be reduced because he has sprinklers installed in the room. Mr. Frazer hasn't discussed that with them yet.

Council members sympathized with Mr. Frazer. They emphasized that the Council's role is simply to propose a rule requiring automatic fire sprinklers in nightclubs as defined by the 2005 Legislature in ESHB 1401. There is virtually no flexibility.

### **Energy Code**

No testimony was received.

### **WAC 51-04, Policies and Procedures**

#### **Brian Minnich**

Thank you, Mr. Chairman, Members of the Committee. My name is Brian Minnich, with the Building Industry Association of Washington.

Mr. Chairman, if I could just comment. I'd like to just make a quick statement, if I may. Sometimes I should probably keep my mouth shut about everything. But I just wanted to make one comment about the gentleman from Oregon that came before you about an hour ago to talk about what was happening in factories. I've said this before. You know, we've been critical at times of the Building Code Council, some of the actions they've taken. But in this instance, I have to defend the Council. I have complete sympathy for the small business owner. BIAW members are primarily all small business owners. And I feel bad for them. Not all these groups or individuals are actually members of associations that follow issues like this. So I can understand his concern.

But I don't have any sympathy for the Department of Labor and Industries. That agency has 2500 staff. They have a factory-assembled structure division that is responsible for this. They enforce these rules on those types of units, whether they're residential or modular units that they're using for schools. And L&I has a seat here at the table. You know, you've got a staff of three or four here, depending upon what month it is. So I think that the Department has a responsibility to the people that they regulate. And I know that they go down into Oregon. They go into factories and inspect this. And so, if that's true that they've just given them a week's notice, well it's no wonder that they're upset. They screwed up.

So I wanted to get that on the record. You know, the housing industry and a number of other groups are heavily regulated by L&I. They have a lot of employees in there. And they have a responsibility to follow what the Council's doing, and then take active action for those that they regulate. So, I've said my piece on that. So, thank you.

Amendments to the policies and procedures are thoughtful changes that staff and Council members who have worked on this have proposed. We think they're good, because we do think it clarifies the process for local jurisdictions to submit local amendments to the Council. I think it also clarifies the process, importantly also, for you as well, as you review these amendments. And I think it gives some guidance and direction, particularly to local jurisdictions, in terms of the things that you're looking for. It also clarifies, I think, more clearly the process for individuals or local jurisdictions who may want to submit an amendment that would be for a statewide building code change, just not a local proposal, but something that's statewide.

So, with that again, I applaud your effort on this. I think it really does clarify the process on local amendments and state amendments. We think it's a good change that, I think, in the long run will help the Council's process over time as you deal with the building code amendment issue.

Lacking further testimony, Steve closed the public hearing. Tim reminded Council members that proposed code changes will be voted on for final passage at the November 4 meeting. He said the mailing for that meeting will contain a verbatim transcript of written testimony presented today, as well as copies of written testimony submitted on the proposed code changes.

## **LOCAL AMENDMENT REVIEW**

### **City of Seattle**

Dave, in the absence of Chairman John Cochran, reported the findings and recommendations of the Building, Fire and Plumbing (BFP) Codes Committee from their meeting yesterday. He said the committee met for four hours, individually reviewing, discussing and in some cases debating in depth 43 amendments. For each of the amendments, the six committee members voted to approve, deny, or rule the amendment was outside the Council's scope. For those determined outside the scope, Dave said that means they don't apply to single-family residences or multifamily residential buildings as defined in RCW 19.27.015(2). He referred Council members to a handout showing how the 43 amendments fall into those three groups.

#### **Motion #2:**

**Dave Baker moved that amendments recommended outside the scope of the Council, as determined by the Building, Fire and Plumbing Codes Committee (IBC Amendments #2, 3, 5, 6, 8, 9, 10, 11, 13, 20, 22, 24 and 25; IRC Amendments #R6, R7 and R9; and IMC Amendment #M1), be approved by the Council as outside its scope. Tom Kinsman seconded the motion.**

Dave said that in most cases the determination that amendments were outside the scope was made by staff. A few more amendments were added to that category during discussion.

**The question was called for. Motion #2 was unanimously approved.**

#### **Motion #3:**

**Dave Baker moved that the Council approve the 18 Seattle local amendments recommended for approval by the Building, Fire and Plumbing Codes Committee (IBC Amendments #1, 7, 12, 15, 17, 21, 23, 26, 27, 28 and 29; IRC Amendments #R2, R3, R8, R10 and R11; and IMC Amendments #M2 and M3). Diane Hansen seconded the motion.**

Kristyn asked why the Committee vote count varies from five to six. Dave responded that there were six votes when Chairman Cochran broke a tie and five when he did not. Kristyn said she'd like to hear some discussion about those votes that were close.

**Amendment to Motion #3:**

**Kristyn Clayton moved to remove #17, #21, #R3, #R8 and #R10 from approval without discussion. Diane Hansen seconded the motion. The motion was unanimously adopted.**

**The question was called for on the amended Motion #3. The motion was unanimously approved.**

**Motion #4:**

**Dave Baker moved Council approval of Amendment #17. Rory Calhoun seconded the motion.**

Dave said in this proposal Seattle tries to increase the square footage requirement. He recalled it being a social issue, of providing nice units in the low-end housing market in Seattle. Dave said discussion revolved around whether it's appropriate for social issues to be in the building code. He argued that it's a market decision.

Diane added that the amendment relates to high density areas of Seattle. She said the city is trying to avoid tenement-type occupancies in high density areas.

Dave noted that Seattle can apply this amendment to everything other than four units or less in a single building, or one-family and two-family dwellings. Passage will not affect that. It will only add four units or less in a single building and one and two-family dwellings. Dave said the same argument can be made for a number of other Seattle local amendments.

Steve asked for confirmation that this amendment increases the square footage. Dave answered that it does increase the square footage. Thus it is more restrictive than the state code.

Kristyn asked if this amendment addresses any life/safety issues. Jon Sui answered that it does not. However he said the argument can be made that crowded conditions are a mental health issue.

Maureen Traxler said that as the cost of housing climbs, the overcrowding problem worsens. This amendment is an attempt to help that problem.

Kristyn asked if this amendment is in Seattle's code presently. Maureen answered that it is in the Seattle building code. Jon said that most of the amendments in Seattle's packet are long-standing amendments, some predating the Council.

Steve noted that Seattle has a housing authority that many smaller cities don't have.

**The question was called for on approval of Amendment #17. The motion failed, 6 aye to 4 nay.**

Diane questioned whether any amendment today will receive the required eight yes votes for passage, given absent Council members. She asked if that's fair to Seattle? Tim said that local jurisdictions always have the option of resubmitting local amendments. Dave noted that elected local officials are the largest group represented on the Council.

Dale Wentworth asked if members can submit an e-mail vote? Tim answered no. However he said that in the past several members have participated in Council meetings by teleconference.

**Motion #5:**

**Dave Baker moved approval of Amendment #21. Dale Wentworth seconded the motion.**

Jon said this amendment contains two significant changes, to combine the categories of balconies and decks, and to establish the live load for decks. Right now balconies are cantilevered without posts and designed to 100 or 60 pounds per square foot under the IBC. Decks have posts and are designed up to 40 pounds per square foot. Jon said that doesn't make sense. They should be designed for the same loads regardless of how they're constructed.

The second question this amendment addresses is: if you can design a deck to the same load as the occupancy served, why can't you do likewise for a balcony? Tom spoke in favor of this amendment. He said it makes sense from an engineering standpoint.

Dave said he voted against it yesterday because it makes the code less stringent, by requiring a lower live load in the design criteria. He said the state is a minimum code that the Council legally cannot reduce. Kristyn asked if this is in the current Seattle code. Jon answered yes, it has been since the mid-80s.

Tom said the point was raised yesterday that most accidents and injuries that have happened on decks and balconies are the result of rotted railings rather than excessive loads.

**The question was called for on Motion #5. Receiving four yes votes, Amendment #21 failed.**

**Motion #6:**

**Dave Baker moved approval of Amendment #R3. Diane Hansen seconded the motion.**



Dave said this amendment contains the same language as amendment #17. This amendment is to the IRC, while #17 is the IBC.

**Adoption of Amendment #R3 failed, receiving seven affirmative votes.**

**Motion #7:**

**Dave Baker moved approval of Amendment #R8. Dale Wentworth seconded the motion.**

The amendment is the same as IBC #15. Dave said discussion yesterday was that this only applies in the IRC to multiple units where one tenant resides above or below another tenant in a duplex situation. He said that in a townhouse configuration, given the construction standards of the two-hour firewall separation, there would be less sound transmission between units.

Jon said there are two sound issues involved here. One is the transmission of spoken words through walls. The other is impact noise from hitting the wall. He said discussion yesterday was that a single, two-hour firewall probably meets the sound transmission rating, but may not meet the impact rating.

**The question was called for. Amendment #R8 was approved, receiving eight aye votes.**

**Motion #8:**

**Dave Baker moved approval of Amendment #R10. Diane Hansen seconded the motion.**

This amendment calls for a steel plate to be placed on the framing, through a stud, prior to installing a dryer duct or penetrating the wall with a pipe.

Kraig Stevenson said this amendment has lots of technical merit. It appears to correct an omission in the model code. For that reason, he recommends that it be a statewide amendment.

**The motion was called for. Amendment #R10 was approved, receiving eight aye votes.**

**Motion #9:**

**Dave Baker moved that the Council approve the recommendation from the Building, Fire and Plumbing Codes Committee for disapproval of eight Seattle local amendments (IBC Amendments #4, 14, 16, 18 and 19; IRC Amendments #R1, R4 and R5). Tom Kinsman seconded the motion.**

**Amendment to Motion #9:**

**Kristyn Clayton moved to omit Amendments #4, #16 and #R1 from approval without discussion. Diane Hansen seconded the motion. The motion was unanimously approved.**

**The question was called for on the amended Motion #9. The amended motion was unanimously approved.**

Jon said that Amendments #4 and #R1 address the same issue. He recommended that they be classified as out-of-scope. Tom supported that classification. He said the chance of it ever occurring is minuscule anyway. Dave pointed out that ruling an amendment out-of-scope means that it doesn't apply to four units or less. Jon said that's fine in this case.

**Motion #10:**

**Tom Kinsman moved that Amendments #4 and #R1 be classified as out-of-scope. Diane Hansen seconded the motion. The motion was approved, with nine aye votes.**

**Motion #11:**

**Dave Baker moved that the Council disapprove Amendment #16, following the recommendation of the BFP Committee. Rory Calhoun seconded the motion.**

Dave said it was discussed yesterday that this amendment may be less restrictive than the state code, because it reduces the height requirement. There was conflicting discussion about stringency. Dave said he personally was concerned because in many places he wouldn't be able to wear a hat.

Kristyn asked if this amendment received a double disapproval from the BFP Committee. Krista said that the initial motion was for approval. When that motion failed, the subsequent motion to disapprove also failed.

Dave said the ceiling height requirements of the IBC and IRC are slightly different. This proposal amends the IBC. He said it could impact single-family dwellings if they are built

under the IBC. Jon and Maureen said it will impact single-family dwellings more than three stories high.

Tom said he voted against this amendment yesterday. Seattle is trying to make it easier for someone to use basement space as a rental. He said the intent is commendable for existing buildings. However this lower standard should not apply to the construction of new buildings.

Dave said, and Tim confirmed, that a currently proposed statewide amendment drops the ceiling height to seven feet. Kristyn asked if there are fire considerations to dropping the ceiling height from seven feet to six feet, eight inches, such as smoke inhalation. Maureen said the City of Seattle Fire Department doesn't have a problem with this amendment. Jon said smoke detectors are still required in sleeping rooms. Dale Wentworth raised a concern about possible problems with sprinkler heads on lower ceilings. Paul O'Connor said there shouldn't be a problem.

Steve spoke against using remodeled building as a gateway to reduce requirements for new construction. He said 6'8" is door height. If the amendment passes, walking in a basement in Seattle would be like continually walking through a door. That's fine for some people, but not everyone.

**The question was called for. Motion #10 was approved, receiving eight aye votes. Again, that motion was to disapprove Amendment #16 as recommended by the BFP Committee.**

### **Duvall Local Amendment**

#### **Motion #12:**

**Diane Hansen moved approval of the Duvall local amendment requiring sprinklers in townhouses over 5,000 square feet. Rory Calhoun seconded the motion.**

Tim said the vote on April 8, 2004, approving this local amendment with eight ayes to three nays, occurred while the local amendment was tabled. Therefore it was not a valid vote. When it was correctly removed from the table and revoted on, it failed to gain the necessary eight affirmative votes required for Council approval. Richard McCartan, Assistant Attorney General for the Council, issued an informal opinion that eight affirmative votes are necessary for Council approval.

Tim said that local amendments similar to Duvall's proposal have been approved by the Council for the cities of Issaquah, Kirkland, Mercer Island, North Bend, Sammamish, Shoreline and Woodinville.

Steve added that the local amendment is being revoted on today, without requiring Duvall to resubmit it, because the Council acknowledges that it made the error rather than Duvall.

Kristyn noted that this is an extremely complex, important issue. She said it's very important to maintain consistency among local jurisdictions. She's disappointed that this amendment didn't go through extensive review at the TAG or committee level before reaching the full Council. On similar votes, she abstained for that reason.

Steve spoke in favor of approving this local amendment. Dale said it's crucial to contractors that local jurisdictions have consistent regulations. Dave said the challenge with consistency is that rationale for these local amendments is the uniqueness of local jurisdictions. He asked if consistency and uniqueness aren't mutually exclusive. Kristyn suggested that a consistent philosophy might suffice. She said she doesn't believe the Council has reached a consistent philosophy yet.

Tom said he's surprised that the state fire service hasn't promoted this issue on a statewide level. He believes the Council is taking piece-meal action. He said if it's a valid issue, it should be proposed as a statewide amendment. Tom reminded everyone that these townhouses have two-hour firewalls between each unit, that the sprinklers are in addition to. The firewalls are inspected by both fire and building personnel. The code prohibits any penetration of them. Tom said there was a huge battle on the national level, and the National Homebuilders Association agreed to construct two-hour firewalls. He wonders if sprinklers are really necessary in addition to two-hour firewalls. Tom said he will support this local amendment if Duvall reduces the two-hour firewall to a one-hour firewall. He objects to continual, building regulation.

Tom also said that the wiring of smoke detectors is totally different today than it previously was. Dale said that smoke detectors can be tampered with, and they fail. A two-hour firewall can be breached. By comparison, a sprinkler system will limit the damage of a fire and save lives. The chance of it malfunctioning is extremely rare.

**The question was called for. The Duvall local amendment was approved, eight aye, one abstention.**

## **OTHER BUSINESS**

Tim said that Brian Minnich called attention to a Pasco ordinance that has not been submitted and approved by the Council. After review, it appears to Tim that it should have been submitted for Council approval. Tim will send a letter to Pasco requesting that the ordinance be sent to the Council.

Tim said that candidates for the open Council staff position will be interviewed on November 7. Rory and Diane have agreed to participate in the panel interview.

On December 15, a Governor's conference will be held for council and commission members. It's a full-day conference with the Governor's staff, concluding with a 4 p.m. reception. Tim said he needs a head count of interested attendees by 5 p.m. today.

Steve asked if that conference includes council and commission members up for reappointment. Tim answered yes, it includes everyone.

Tim said there'll be a workshop on energy at the November 4 Council meeting. Krista said to plan on working the full day on November 4.

## **ADJOURNMENT**

Lacking further business, Steve adjourned the meeting at 12:55 p.m.